UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

REGIONAL TYPOGRAPHERS, INC.

and **Case No. 29-CA-25760**

LOCAL 51-23M, GRAPHIC COMMUNICATIONS UNION, AFL-CIO

***Tara A. O'Rourke, Esq.*, Brooklyn, NY,**
for the General Counsel.

DECISION

Statement of the Case

STEVEN DAVIS, Administrative Law Judge: Based on a charge filed on August 5, 2003[1], by Local 51-23M, Graphic Communications Union, AFL-CIO (Union), a complaint was issued on October 21 against Regional Typographers, Inc. (Respondent). The complaint alleges essentially that the Respondent violated Section 8(a)(1) and (5) of the Act.

The Respondent failed to file an answer to the complaint. Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint expressly stated that unless an answer was filed by November 4, all the allegations in the complaint would be considered admitted. The formal papers in evidence establish that the complaint was served by certified mail, and a postal return receipt bears a signature and is dated as received on October 29. An affidavit of service by a Regional office agent is also in evidence.

The Regional office, by letter dated November 7, notified the Respondent that unless an answer was received by November 14, it would file a motion for default judgment. In response, Darrell Conway, bankruptcy counsel to the Respondent advised, by letter of November 20, that a Chapter 7 Bankruptcy Petition had been filed in Bankruptcy Court. He stated that "this filing stays any proceeding outside the bankruptcy action", and that the hearing "should be adjourned" pending the completion of the bankruptcy proceeding. By letter dated November 25, the Regional Director advised Mr. Conway that the automatic stay provision of the bankruptcy code does not apply to unfair labor practice proceedings before the Board, citing *NLRB v. 15th Avenue Iron Works, Inc.*, 964 F.2d 1336 (2nd Cir. 1992). The Director advised that the hearing would proceed as scheduled on December 2.

On December 2, a hearing was held before me in Brooklyn, New York, at which the counsel for the General Counsel moved for a Default Judgment. The Respondent made no appearance at the hearing.

Therefore, in accordance with Sections 102.20, 102.24(a), and 102.25 of the Board's

[1] All dates hereafter are in 2003.

Rules and Regulations, I hereby grant the General Counsel's Motion for Default Judgment. Upon the evidence presented in this proceeding, I make the following:

Findings of Fact

I. Jurisdiction

At all material times, the Respondent, a domestic corporation, having its principal office and place of business at 131 Henry Street, Freeport, New York, and a facility located at 389 South Main Street, Freeport, New York, has been engaged in the printing and sale of promotional materials for various customers.

During the past year, which period is representative of its annual operations in general, the Respondent, in the course and conduct of its business operations, purchased and received at its New York facility, paper and other supplies and materials valued in excess of $50,000, directly from points outside New York State.

At all material times, the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act, and the Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. The Alleged Unfair Labor Practices

On or about May 7, following the conduct of a Board election, the Union was certified as the exclusive collective-bargaining representative of the following appropriate collective bargaining unit of the Respondent's employees within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time pressroom employees, including pressmen and bindery employees employed by the Respondent at its 389 South Main Street, Freeport, New York facility, excluding all office clerical employees, pre-press employees, guards and supervisors as defined in Section 2(11) of the Act.

At all material times, the Union, by virtue of Section 9(a) of the Act, has been the exclusive collective-bargaining representative of the employees in the unit.

On or about July 25, the Union requested that the Respondent bargain collectively about the effects of its decision to close its facility located at 389 South Main Street, Freeport, New York, and to lay off unit employees, and since on or about July 25, the Respondent has failed and refused to bargain collectively about such subjects. Those subjects relate to the wages, hours and working conditions of employment of the unit and are mandatory subjects for the purpose of collective-bargaining.

Conclusions of Law

It is well established that an employer that decides to terminate its operations and go out of business has an obligation to bargain about the effects of that decision with the union representing its employees. *First National Maintenance Corp. v. NLRB*, 452 U.S. 666 (1981), and that by refusing to bargain with the Union concerning the effects of its decision to terminate its operations and lay off its employees, the Respondent has violated Section 8(a)(1) and (5) of the Act. *Commercial Forgings, Co.,* 315 NLRB 162 (1994).

By failing and refusing to bargain collectively and in good faith with the Union concerning the effects of its decision to close its facility and to lay off its employees, the Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith the Union as the exclusive collective-bargaining representative of the unit employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent has unlawfully failed and refused to bargain with the Union about the effects of its closing and its lay off of its employees, the bargaining unit employees have been denied an opportunity to bargain through their collective-bargaining representative at a time when the Respondent might still have been in need of their services and a measure of balanced bargaining power existed. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, it is necessary, in order to ensure that meaningful bargaining occurs and to effectuate the policies of the Act, to require not only that the Respondent bargain with the Union, on request, about the effects of the closing and the lay off of its employees, but in addition a limited backpay remedy shall be ordered, which is designed both to make the employees whole for losses as a result of the Respondent's failure to bargain, and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent.

Accordingly, the Respondent shall be required to pay backpay to unit employees in the manner required in *Transmarine Navigation Corp.,* 170 NLRB 389 (1968).

The Respondent shall pay unit employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision until the occurrence of the earliest of the following conditions: (1) The date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the termination of operations on unit employees, including their layoff (2) a bona fide impasse in bargaining (3) the failure of the Union to request bargaining within 5 days of the date of this Decision, or to commence negotiations within 5 days of the Respondent's notice of its desire to bargain with the Union or (4) the subsequent failure of the Union to bargain in good faith. In no event shall the sum paid to any of these employees exceed the amount they would have earned as wages from the date on which the Respondent terminated its operations to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain, whichever occurs sooner; provided, however, that in no event shall this sum be less than the amount these employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ.

Backpay shall be computed in the manner prescribed in *F.W. Woolworth Co*., 90 NLRB 289 (1950), with interest to be computed in the manner prescribed in *New Horizons for the Retarded,* 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the

following recommended[2]

ORDER

The Respondent, Regional Typographers, Inc., Freeport, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively in good faith with the Union concerning the effects of its decision to close its facility and lay off its unit employees in the following appropriate unit:

> All full-time and regular part-time pressroom employees, including pressmen and bindery employees employed by the Respondent at its 389 South Main Street, Freeport, New York facility, excluding all office clerical employees, pre-press employees, guards and supervisors as defined in Section 2(11) of the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain collectively in good faith with the Union concerning the effects of its decision to close its facility located at 389 South Main Street, Freeport, New York, and to lay off its employees, and make whole the employees in the manner set forth in the Remedy section of this decision.

(b) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(c) Within 14 days after service by the Region, post at its facility in Freeport, New York, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are

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[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[3] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 25, 2003.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C.

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Steven Davis
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board had found that we violated Federal labor law and has ordered us to post and obey this notice.

WE WILL NOT fail and refuse to bargain collectively in good faith with Local 51-23M Graphic Communications Union, AFL-CIO, concerning the effects of our decision to close our facility and lay off our unit employees in the following appropriate unit:

> All full-time and regular part-time pressroom employees, including pressmen and bindery employees employed by the Respondent at its 389 South Main Street, Freeport, New York facility, excluding all office clerical employees, pre-press employees, guards and supervisors as defined in Section 2(11) of the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, on request, bargain collectively in good faith with the Union concerning the effects of our decision to close our facility located at 389 South Main Street, Freeport, New York, and to lay off our employees, and make whole the employees.

_____
REGIONAL TYPOGRAPHERS, INC.

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

One MetroTech Center (North), Jay Street and Myrtle Avenue, 10th Floor, Brooklyn, NY 11201-4201

(718) 330-7713, Hours: 9 a.m. to 5:30 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (718) 330-2862.